

APPROVED MINUTES
CITY OF MILPITAS

Minutes:	Regular Meeting of Milpitas City Council (including Joint Meeting with Milpitas Redevelopment Agency)
Date of Meeting:	February 1, 2005
Time of Meeting:	6:30 p.m. (Closed Session) 7:00 p.m. (Public Business)
Place of Meeting:	City Hall Council Chambers, 455 E. Calaveras Blvd.

ROLL CALL

Mayor Esteves called to order the adjourned meeting of the Milpitas City Council at 6:30 p.m. Present were Mayor Esteves, Vice Mayor Gomez (arrived 6:45 p.m.), and Councilmembers Giordano, Livengood, and Polanski.

CLOSED SESSION

Mayor Esteves publicly stated the Council would convene in Closed Session to discuss the following two items listed on the agenda:

1. Conference with Real Property Negotiators

(Pursuant to Government Code section 54956.8)

Property: 195 N. Main Street, APN No. 022-08-043

Agency Negotiators: Charles Lawson, Steven Mattas and Felix Reliford

Negotiating Parties: Milpitas Redevelopment Agency and Zion Church

Under Negotiation: Terms and conditions for acquisition of property

2. Conference with Legal Counsel - Anticipated Litigation

(Pursuant to Government Code section 54956.9[c])

Initiation of Litigation: one case

Councilmember Livengood abstained from participating in the Closed Session.

Mayor Esteves adjourned the meeting to Closed Session at 6:31 p.m.

The City Council meeting reconvened at 7:00 p.m. with Mayor Esteves presiding and Vice Mayor Gomez and Councilmembers Giordano, Livengood, and Polanski present.

**CLOSED SESSION
ANNOUNCEMENTS**

There were no Closed Session announcements.

PLEDGE

Members of Troop No. 92 led the Council and audience in the Pledge of Allegiance.

MINUTES

MOTION to approve the City Council minutes of January 18, 2005, including joint meeting with the Redevelopment Agency, as submitted.

M/S: Giordano, Gomez.

Ayes: 5

SCHEDULE

Councilmember Livengood reported the BART/MTA Policy Advisory Board meeting scheduled for February 23, 2005, had been cancelled.

MOTION to approve the Schedule of Meetings as amended.

M/S: Livengood, Giordano.

Ayes: 5

PRESENTATIONS

Mayor Esteves invited Rotary President Pono Aiona to the podium. Mr. Aiona announced this was the centennial for Rotary and the tenth anniversary of the Milpitas Rotary Club's Gene Schwab "Service Above Self" Award acknowledging City workers who contribute their time and energy in an outstanding fashion. Mr. Aiona announced this year's co-winners were Eliren Pasion and Deborah Souza and their names had been added to the perpetual plaque on display at City Hall. Mayor Esteves recognized all the nominees for the award.

Mayor Esteves read a proclamation honoring Deborah Souza as a recipient of the 2005 Gene Schwab Memorial "Service Above Self" Award and presented it to Ms. Souza. Ms. Souza thanked the Rotary for recognizing her efforts and the Mayor and Council for their support.

Mayor Esteves read a proclamation honoring Eliren Pasion as a recipient of the 2005 Gene Schwab Memorial "Service Above Self" Award and presented it to Mr. Pasion. Mr. Pasion said he was honored, thanked the Schwab family, and the Mayor and Council for supporting the employees.

Mayor Esteves recognized Gene Schwab's brother who was present in the audience.

Mayor Esteves read a proclamation proclaiming February 2005 as "Silicon Valley Reads Month" in Milpitas and said the proclamation would be sent to the appropriate persons.

Mayor Esteves presented a Commendation to Matthew Au on his achievement of the rank of Eagle Scout. The Mayor also recognized Matthew's mother and brother who were also present.

Mayor Esteves announced the City had received the Government Finance Officers Association's Distinguished Budget Presentation Award for its Budget and asked the City's Finance Director Emma Karlen to accept the Award. Mayor Esteves also presented a Commendation to the Finance Department for their work in achieving the Award.

CITIZENS FORUM

Mayor Esteves invited members of the audience to address the Council on any subject not on the agenda, requesting that remarks be limited to two minutes or less.

Ernestina Zamora Garcia said she has lived in Milpitas for 40 years and was very upset; she was present for two reasons; she wanted to give support for the ordinance Vice Mayor Gomez tried to have approved; and she was upset with the Council's approval of the huge KB Homes project. Ms. Garcia expressed concern for the amount of money paid to the County for the land, the increased traffic the KB project will bring, and she felt the matter should have been put on the ballot for a vote.

Mayor Esteves informed Ms. Garcia that two minutes were up; however, the Council would be discussing the two-minute time limit later in the meeting. Vice Mayor Gomez said he thought the current policy permitted the time to be extended by a vote of the Council. It was Council consensus to allow speakers a total of four minutes. Mayor Esteves noted that all speakers would be allowed up to four minutes.

Ms. Garcia continued by stating the rights granted to her by the U.S. Constitution were very important, felt it wasn't fair that the Council approved the KB project without putting the matter on the ballot, asked that the Council not follow what San Jose is doing, and said she felt very bad and sad about corruption in Milpitas.

Rekha Kodialbail said she was a volunteer for the "Peace Walk for Tsunami Victims" to be held in Milpitas on Sunday, February 20, 2005, and sponsored by the International Association for Human Values. Ms. Kodialbail invited everyone to participate in the Walk and be part of the effort and offered her phone number for further information.

Frank De Smidt extended an invitation to everyone to attend the Chamber's Crab Feed on Friday, March 4, 2005, at Napredak Hall.

ANNOUNCEMENTS

Councilmember Polanski said she had a request for an agenda item for the next meeting and commented she understood that at two meetings last week, Councilmember Giordano mentioned that the Council was busy looking to hire a City Manager ahead of a Planning Director, Fire Chief, and Police Chief and at a Sister Cities Commission meeting, Councilmember Livengood mentioned that the Fire Chief was retiring; since she was not aware of any of these things occurring, she requested an agenda item at the next meeting to

discuss the process for hiring a City Manager and to have information relative to any senior or key staff positions being filled or retirements.

Vice Mayor Gomez said he noticed the mid-year budget adjustments item on the agenda included hiring a head hunter to fill vacancies, and he assumed staff would be discussing which positions would be filled.

Mayor Esteves congratulated the Milpitas Knights Youth Football and the Milpitas PAL Soccer League on its recent event and thanked the volunteers, coaches, officers, parents, and players for keeping up with the healthy activities.

Mayor Esteves congratulated the Indo-American Community for their India Republic Day.

Mayor Esteves wished the Vietnamese and Chinese communities and everyone else a Happy New Year.

ANNOUNCEMENT OF CONFLICT OF INTEREST

City Attorney Mattas inquired if any member of the City Council had a Conflict of Interest to disclose it for the record. Councilmember Livengood announced that because he formerly worked for KB Homes, he would abstain from items RA 10 and 18 on the agenda.

MOMENTS OF REFLECTION

Mayor Esteves stated this was to do with the City's Ethics Program and inquired if there were any comments from the Council.

Councilmember Polanski thanked everyone who came to the Time Capsule Dedication on January 26, 2005, noting that the time capsule will be opened on January 26, 2029. Councilmember Polanski also thanked staff members who assisted in making the event so nice for the residents and commended Cindy Maxwell for all her efforts on behalf of the 50th Anniversary Committee.

Mayor Esteves expressed his support for the Milpitas Code of Ethics commenting that he thought it critical for everyone – elected officials, City staff, and everyone including residents – to be aware of the Code of Ethics.

AGENDA

City Manager Charles Lawson noted the title for item RA9 should read quarter ended "December 31, 2004," and not September 30, 2004.

Mayor Esteves called attention to the two supplemental items on the agenda, item 4A and item 9A.

Vice Mayor Gomez said that he would be pulling item 5 from the Consent Calendar and because his concern had to do with the action the Council takes on item 6, he would be asking that item 5 be considered after item 6.

MOTION to approve the agenda as amended.

M/S: Livengood, Giordano.

Ayes: 5

CONSENT CALENDAR

Mayor Esteves inquired if anyone wished to make any changes to the Consent Calendar.

City Manager Lawson reported staff would like to add item 9 to the Consent Calendar.

Vice Mayor Gomez asked that item 1 and item 5 be removed from the Consent Calendar.

MOTION to approve the Consent Calendar, items with asterisks on the agenda, as amended by the addition of item 9 and the removal of items 1 and 5, in accordance with the staff recommendations.

M/S: Polanski, Livengood.

Ayes: 5

(Councilmember Livengood abstained from voting on item 18.)

- 5. Senior Commission Bylaws** Item not discussed; continued to February 15, 2005.
- 6. Council Handbook Amendments** Item not discussed; continued to February 15, 2005.
- 7. Gateway Sign Pilot Project** Item not discussed; continued to February 15, 2005.
- *8. Odor Control Statue Report** Directed staff to reduce the frequency of routine updates; noted receipt and filed progress report.
- *9. MTC Grant Application** Approved request to submit a grant application to the Metropolitan Transportation Commission 2005 Cycle of Traffic Engineering Technical Assistance Program to study and provide operational improvements to the State Route 237 and McCarthy Blvd Interchange.
- *9A. Water Pollution Control Plant Appropriation** Approved the budget appropriation in the amount of \$730,000 for Milpitas' share of the additional costs for the Water Pollution Control Plant Reliability Project.
- *10. Wal-Mart Grant** Authorized the Police Department to accept funds in the amount of \$2,250 and to donate the funds to the Milpitas Police Activities League general account.
- *11. BAPS Care International Donations** (1) Authorized the Recreation Division and Fire Department acceptance of the BAPS Care International donations in the amount of \$500 each to be utilized for the Recreation Assistance Program (R.A.P.) and S.A.F.E. Neighborhood Preparedness program; and
(2) Appropriated \$500 to the Recreation Services Operating Budget and \$500 to the Fire Department Operating Budget.
- *12. Recreation Donations** Approved miscellaneous donations to Recreation Services that are \$1,000 or less to be applied towards the Recreation Assistance Program.
- *13. Traffic Safety Grant Application** Approved request to submit a grant application to the California Office of Traffic Safety for funding to implement an Automated Collision & Analysis system with GIS capabilities.
- *14. Ordinance No. 262.1 Open Government** Item not discussed; continued to February 15, 2005.
- *15. Ord. No. 38.765 (Adopt)** Waived full reading of the ordinance; Adopted Ordinance No. 38.765 (ZC2003-2) amending Chapter 10, Title XI of the Milpitas Municipal Code.
- *16. Initial Acceptance Project No. 5058** Adopted Resolution No. 7502 granting initial acceptance, subject to a one-year warranty period, and reduction the faithful performance bond to \$28,817, Hall Park Walkway, Project No. 5058.
- *17. Coyote Creek Trail Project No. 4206** (1) Waived minor irregularities in the bidder's documentation and award a construction contract to GradeTech, Inc. in the amount of \$539,800 for construction of Coyote Creek Trail, Reach 1;
(2) Authorized execution of a fund transfer agreement with the Santa Clara Valley Transportation Authority for Coyote Creek Trail, Reach 1, Project 4206, subject to approval as to form by the City Attorney;
(3) Appropriated \$160,412 in Measure B funds, \$17,380 in developer contributions, and \$68,900 in Santa Clara Valley Water District funding to the project budget.
- *18.** Authorized the City Manager to execute the agreement amendment with Harris and Associates

Library Offsite Utility Improvements

in the amount not-to-exceed \$15,000, subject to approval as to form by the City Attorney. (Councilmember Livengood abstained on this item.)

***19.
Valley Oil Company
Amendment No. 3**

Approved Amendment No. 3 to the Valley Oil Company contract, subject to approval as to form by the City Attorney, and authorized an increase of \$80,000 to a maximum compensation amount of \$360,000.

***20.
Miscellaneous Vendors**

Approved the following purchase requests:

1. \$7,218.14 to Canoga Perkins Corp. for the purchase of two (2) fiber optic Multiplexers and four (4) I/O cards directly from the manufacturer for the Information Services Department in accordance with Government Service Administration contract GS-35-F-0232J and quote No. JS1196. (Funds are available from the Information Services' operating budget for this purchase.)
2. \$137,888 to the Santa Clara County District Attorney's Crime Lab for analysis of physical evidence submitted by the City of Milpitas Police Department during calendar year 2004. The annual cost to operate the Major Case Unit of the Crime Laboratory during calendar year 2004, was \$1,675,380. The invoiced amount represents our share based upon the last five years average (9.34%) of cases submitted by the City of Milpitas Police Department. (Funds are available from the Police Department's operating budget for these services.)

PUBLIC HEARINGS

**1.
Sign/Zoning Amendments
(Continue to 3/15/05)**

Vice Mayor Gomez removed this item from the Consent Calendar and said he had heard from members of the Real Estate Board and others in attendance at the Sign Ordinance Task Force meetings that things were getting a little contentious, especially the last two meetings, and wanted to know if that was correct; a lot of them felt this board was just spinning their wheels on this issue.

Acting Neighborhood Services & Planning Director Tambri Heyden responded there were some new issues being raised, she didn't think they were insurmountable, but they were changes to the existing ordinance that weren't being proposed to be changed that have to do with real estate signs, setbacks for real estate signs, and the maximum number of violations.

Vice Mayor Gomez said what concerned him was one of the members said it was getting a little uncomfortable; another member said if you don't like this, get off the task force; and asked if that was something that was said at the meeting or was that how bad things were getting. Ms. Heyden responded she remembered a comment like that but couldn't recall if it had to do with the attendance of some of the task force members because there were individuals that have attended only one or two meetings (out of eight) and haven't consistently been participating who are wanting to bring up issues that the rest of the group, that has been consistent in their participation, had already put to rest and moved forward; she thought that reflected some of the frustrations of the task force because they had put a lot of time into it and most of them were well prepared when they came to meetings.

Vice Mayor Gomez said he would like to get this moving and didn't want anyone who serves on the task force to feel uncomfortable; that was why he was asking his colleagues to consider assigning him to Chair the task force to get it moving.

Councilmember Livengood said Ms. Heyden mentioned there were new proposals that the Council hadn't seen before and asked who was proposing them. Ms. Heyden responded at the last meeting they were down to two issues, the real estate industry brought the new issue regarding something that has been on the books for 15 years (setbacks for real estate signs), she was trying to accommodate everybody's issues because it was not very often that you get to sit down with a task force and have an opportunity to open up your code and make improvements to it; it had been difficult getting a response back so it has been a moving

target, but she had been working with the City Attorney's Office this week on liability issues with eliminating such a setback and was researching other cities.

Councilmember Livengood expressed concern for what he had heard was being said and asked if Ms. Heyden remembered what was said. Ms. Heyden said she thought it had more to do with the frustration over the lack of consistent attendance.

Councilmember Livengood said he thought Vice Mayor Gomez's suggestion was a good one, he thought maybe providing some leadership from the Council at this point was worthwhile, and he was willing to support it; he believed there needed to be more focus and this needed to be wrapped up, a decision made, and he wanted to be sure everybody on the task force felt comfortable in saying whatever they wanted to say.

Councilmember Giordano said she would be supporting moving this forward with Vice Mayor Gomez part of the group and inquired if Ms. Heyden had tried juggling the times of the meetings for the members. Ms. Heyden responded she hadn't actually done that but the group thought this was a pretty good time, it had been going on for three months, and everybody had gotten used to the schedule.

Councilmember Polanski said she had no problem with the Vice Mayor taking on another position; it was her understanding that the Sign Ordinance was delayed in December and it was going to be heard sometime in January but part of the discussion was that it was going to be 90 days, so some of the frustration she heard was that people have been at these meetings, made decisions that were going to come to the Council, and the Council finally would make the decision, so she was confused as to why the task force continued to meet unless there were some things the Council wanted more input on. Ms. Heyden responded back in December there were two issues presented, one was the idea of instituting administrative citation authority under the Sign Code; since that December meeting, the task force came up with a really good idea of once the ordinance is adopted, it exist for a year with quarterly evaluations of enforcement and actually postpone the effective date of the enforcement for six months and put together a detailed outreach program; there was also the pro-active component as well, and the direction of the Council in December was that it didn't want the pro-active enforcement.

Councilmember Polanski said she had no difficulty with that, she wasn't at the December meeting so she didn't set the direction but hoped that as a follow up, the task force was aware that it would make recommendations that will either be accepted or rejected by the Council.

Mayor Esteves inquired when was the first time this issue was discussed and the task force met because it had been going on for a long time. Ms. Heyden said she thought the first task force meeting was the end of September or early October. Mayor Esteves said he didn't have a problem with the proposal, but he would put more weight on the opinions of the regular attendees. Mayor Esteves further stated the reason this got delayed was while some sacrificed their Christmas vacation and holidays to attend, a few failed to do that, and he hoped the recommendations of the regular attendees would be considered.

MOTION to assign Vice Mayor Gomez to Chair the task force until its completion and continue the public hearing to March 15, 2005.

M/S: Giordano, Livengood.

Ayes: 5

Mayor Esteves invited anyone who would like to speak on this item.

Frank De Smidt said he had attended all the meetings, there were some differences of opinions and so forth, but there were a lot of meetings and he wanted to thank staff, who had spent a lot of time putting all these meetings together; most of the meetings had to do with going over the nuts and bolts of the Sign Ordinance, a lot of things were discussed, and a lot of it took many meetings and time; and he wanted to commend staff and all the other task force members who came to these meetings to help work out these things; there were a lot of good issues in the Sign Ordinance that he hoped the Council will consider very seriously.

**2.
Approve Undulators
Pines Neighborhood**

Principal Transportation Planner Jaime Rodriguez began by correcting the number of undulators proposed from five to eight, correcting Blue Spruce Drive to Blue Spruce Way in the title, and correcting the recommendation to install eight new undulators, including five along Starlite Drive. Mr. Rodriguez explained this item was before the Council at the request of residents of the Pines neighborhood, who had submitted a petition on June 25, 2004, signed by approximately 115 residents requesting a study on the need for undulators along their street to reduce speeding. Mr. Rodriguez reviewed the City's current policy adopted by the Council in October 1997 regarding undulators. Mr. Rodriguez reported staff surveyed Starlite Drive, Blue Spruce Way, and Fallen Leaf Drive and mailed 463 surveys to residents of the Pines neighborhood to determine the level of support for the undulators; 124 responses were received with 82 percent of the residents supporting the installation of undulators along Starlite Drive and Blue Spruce Drive and 76 percent supporting the installation of an additional undulator along Fallen Leaf Drive.

Mayor Esteves expressed concern that there were only 124 responses and inquired how many residents there were. Mr. Rodriguez responded of the 124, 88 were residents along Starlite and Blue Spruce. Mayor Esteves said he was looking at the 70 percent requirement and inquired how many households were on Starlite. Mr. Rodriguez said he didn't have that number but noted that the customer survey only allowed one vote per household. Mayor Esteves said he wanted to know how many households were on the street that should be considered because he thought that was the basis for the 70 percent. Mayor Esteves said he wanted to make sure the 70 percent was valid.

City Attorney Steve Mattas suggested giving him a few minutes to look up the policy and get back to the Council.

Mr. Rodriguez reviewed the recommendation to certify the survey results and approve installation of eight new undulators.

Mayor Esteves opened the public hearing and invited comments. There were none.

MOTION to close the public hearing.

M/S: Giordano, Livengood.

Ayes: 5

Mayor Esteves said he really didn't have a problem with this but just wanted to make sure the 70 percent criteria was valid. Mayor Esteves expressed concern that only 124 surveys were returned and if the percentage was based on the 124, it really wasn't 70 percent of the residents.

City Attorney Mattas reported that the policy wasn't in the Code but was a separate policy, which he did not have. Mr. Mattas suggested the Council continue on to the next item to give him an opportunity to get a copy of the Council adopted policy to review, he would get back to the Council, and the Council could then take action.

JOINT REDEVELOPMENT AGENCY AND CITY COUNCIL MEETING

**RA1.
CALL TO ORDER**

Mayor Esteves called to order the regular meeting of the Milpitas Redevelopment Agency, meeting jointly with the City Council, at 8:30 p.m.

**RA2.
ROLL CALL**

Present were Mayor Esteves, Vice Mayor Gomez, and Agency/Councilmembers Giordano, Livengood, and Polanski.

**RA3.
MINUTES**

MOTION to approve the Redevelopment Agency minutes of January 18, 2005, including joint meeting with the City Council, as submitted.

M/S: Gomez, Polanski.

Ayes: 5

**RA4.
AGENDA**

MOTION to approve the Agenda and Consent Calendar as submitted.

M/S: Gomez, Giordano.

Ayes: 5

(Councilmember Livengood abstained from approval of item RA10.)

**RA5.
LIBRARY PROJECT UPDATE**

Project Manager Mark Rogge reported the Council had approved the concept design for the Library, which was the first step in the design process; the follow-up was to make sure the numbers had been gone through and also to move onto the Schematic Design Phase; the Conceptual Design report was available on the web site, as well as a display at the Library depicting the graphics and other information about the Conceptual Design; and the Schematic Design would use the Concept Design as a basis. Mr. Rogge said he would be reviewing the Schedule, the Budget, the Cost Plan and the Schematic Design process.

Mr. Rogge reported that as of February 1, 2005, the project was on schedule to begin the Schematic Design process; the original Cost Plan that was derived was \$39 million; at the completion of the Conceptual Design, the architect and its cost estimating company reviewed the Conceptual Design and applied a cost standard (similar to the cost plan); a complete cost estimate could not be done without the complete plans and specs, however, based on the information in the Cost Plan, the cost had been derived; a separate Cost Estimating company had also taken the information, and after reconciling the two costs, staff did not find any significant differences between the costs other than the methodology used.

Mr. Rogge further reported that the current Library Cost Plan showed that the target for the design of the Library would be \$20 million; with the contract for the architect, the final estimate (which would come with the final set of plans) would be established and at each step, staff would bring it back to the Council; \$20 million was the target but it could possibly go as high as \$2 million more in an actual bidding condition; it was also recognized that after the bidding was done, there could be 10 percent in change orders, which were normal for a project of this scale; overall, \$24 million was being accounted for in the building; when adding the site work, plus the furniture, technology, and equipment (which included approximately \$500,000 for energy savings equipment), it brought the total to \$29.3 million; adding in 10 percent for soft costs and project contingency plus all the architectural fees and testing and inspections, it brought the project to the \$39 million Cost Plan.

Mr. Rogge reviewed the Schematic Design process and reported that a final Schematic Design would be brought to the Library Subcommittee for approval prior to coming to the Council. Mr. Rogge also noted an informational presentation was scheduled on April 28, 2005, for the Library Advisory Commission, the Parks, Recreation and Cultural Resources Commission, the Youth Commission, and the Planning Commission.

Mayor Esteves said this presentation was presented to the Library Subcommittee comprised of Councilmember Livengood and the Mayor. Councilmember Polanski suggested all other commissioners be invited to the presentation.

MOTION to note receipt and file the progress report on the Library design.

M/S: Gomez, Polanski.

Ayes: 5

**RA6.
MIDTOWN WEST
PARKING GARAGE**

Acting Planning Manager James Lindsay reported that the City would be building a parking structure on the west side of N. Main Street, just south of the Calaveras Blvd off ramp to service the medical facility the County was building; the commitment to date was that the City would provide the County 275 parking spaces; in return the County would provide approximately \$6.8 million for design and construction of the facility and approximately \$68,000 a year for maintenance of the facility. Mr. Lindsay further reported in looking at the parking structure and some of the recent parking structures built in other communities, staff thought this would be an excellent opportunity to at least explore complimentary uses within the structure, one of which would be to consider some type of basic retail space within the ground floor to provide a street presence on Main Street, which was consistent with the

Midtown goals in addition to providing a revenue source for ongoing maintenance of the facility. Mr. Lindsay provided a schematic of what the retail space could look like on the first floor of the garage; staff was also seeking direction regarding whether to expand it even further and looking at creating a banquet or meeting facility for the community on the top level of the parking structure; some of the ancillary uses that could come with a banquet facility would be a full service restaurant; in addition, it could provide an additional structural type facility in the case of a natural disaster in Milpitas. Mr. Lindsay explained the schematic was similar to what the city of San Jose had done at its Fourth Street Garage and the city of Santa Cruz also had a scaled structure of the same nature.

Vice Mayor Gomez inquired how other cities operated their banquet facilities. Mr. Lindsay said in the case of San Jose's Fourth Street Garage, the Fairmont catered that facility; this was one of the reasons staff was suggesting maybe a full-service restaurant operation in conjunction with the structure; the success of the banquet facility and the cost of providing it could be handled by having a "for profit" restaurant operate the facility with the City just leasing the space.

Councilmember Livengood said he had lost count of the number of times staff had come to him with a proposal for a commercial development, it had never gone anywhere, and the City had spent consultant fees and staff time on a number of projects; he thought every time the City tries to become a developer or get into some type of a JPA with a private developer, nothing ever comes of it; he was not interested in pursuing it at this time and assumed that once the parking garage was built, if the Council wanted to pursue it later, it could. Mr. Lindsay responded one of the options the Council could direct was to design the structural system to accommodate this facility in the future. Councilmember Livengood explained that when these kinds of things were built, they drove the cost up because the structure that had to be designed and built was more expensive than if this type of facility was not included; he felt at this stage, it was premature and he was not excited about it, based on the City's history and track record in dealing with commercial development. Councilmember Livengood said that right now there was not a heavy demand for banquet space at the hotels in the City; he was not adverse to looking at it, but would be looking at it with a jaundiced eye as it related to the City's past history with these types of things and the need in the community for it.

Councilmember Polanski said she felt the Council should look at the possibility of doing something like the Fourth Street Garage or having some type of facility on the top, even if it was something that was considered for the future; she continually heard from organizations within Milpitas that there was no space in Milpitas and they had to go out of town when they would prefer to hold their events in Milpitas; she thought it important to look at the future and the vision of what was wanted for the Midtown and felt it would be important to incorporate something of this nature into the parking garage.

Councilmember Giordano, referring to the County reimbursing for the maintenance costs of the garage, inquired how that would work. Mr. Lindsay responded there currently was a Memorandum of Understanding with the County that set the parameters of the commitments; the City would own and maintain the garage, the payment would come to the City on an annual basis, and the actual details and the financial transactions were still being negotiated through the Disposition and Development Agreement, which should be before the Council in April.

Councilmember Giordano inquired what would be involved from the staff level just to develop some kind of a work plan to look at to see if it was feasible or not. Mr. Lindsay responded he expected it would be about a two-month effort and would include hiring a consultant since staff did not have the economic expertise. Councilmember Giordano inquired if Mr. Lindsay was asking that the consultant be hired. Mr. Lindsay responded no; staff was looking first for direction from the Council; then staff would come back with a work plan on how to accomplish it.

Councilmember Livengood said he could spend the next ten minutes listing failed projects and was so glad staff came out tonight and said the magic word "consultant" because if it hadn't

been said and the Council moved forward, the next step would have been to hire the consultant. Councilmember Livengood listed Sam's Club, Kohl's, a five-star hotel, and Costco as projects staff had brought forward to the Council to look at as if they were going to somehow become part of a development, some kind of scheme that the City was going to be involved with; every single one had failed, and he was tired of spending the tax payers' money on consultants and real estate agents to tell us what we already know, and he did not want any more of it and would vote against it. Councilmember Livengood said he would like to have some information about some of the consultants relating to the hotel and a few other things that were done to come back to the Council (it didn't have to be on the agenda) to give the new Councilmembers an idea of how much money had been spent on those kinds of things; he just wanted to build a library and a parking garage that met the needs of that area.

Councilmember Polanski said she would like to see the report Councilmember Livengood requested be an agenda item that showed how much money had been spent on consultants; the library and the parking garage would still be done; and she believed the Redevelopment amendment would assist the City for years to come.

Mayor Esteves thanked staff for bringing the Council a good idea and said he considered this to be a very strong opportunity. Mayor Esteves said it was just directing staff to come back with more information about the project, especially cost information and economic feasibility; he thought Milpitas had very limited facilities and this was an opportunity to have space for up to 600 people; it was a service for Milpitas residents, he knew there was a demand that would be confirmed by a study, and he would like to explore the opportunity.

Vice Mayor Gomez said he would be sitting this one out and suggested not doing this; he felt he didn't need a market study or cost analysis because if these things could be profitable, the private sector would be doing it.

Acting City Manager Lawson asked for clarification that Councilmember Livengood really wanted a report from staff on failed projects. Councilmember Livengood said there were so many and the public didn't know about many of them.

MOTION to table this item, that it not be pursued at this time, and that the Council continue to consider the parking garage as a parking garage only at this time and at a later time the potential could be looked at.

M/S: Livengood, Gomez.

Councilmember Polanski said she was not looking at it as something to make a profit from; she was looking at it more as something for the future of the Midtown area and looking at all of the potential benefits as well as the shelter; based on the motion, she would be voting no; she also believed she requested a report be brought to the Council on some of the failed projects and she would like to see what they were in the last two years.

Mayor Esteves said he supported future facilities for the residents, it was a service to the residents, and he thought the Council should have vision.

VOTE ON MOTION: Ayes: 3 Noes: 2 (Esteves, Polanski)

City Attorney Mattas asked for clarification from the motion maker stating that the initial part of the staff presentation made reference to potential retail on the ground floor and inquired whether the motion was specifically to having the garage focused on parking purposes, which was the way he understood the wording of the motion, and that would be to the exclusion of even consideration of retail uses.

Councilmember Livengood said he was referring to the top of the parking garage facility, not necessarily the retail that was scheduled to be next to the library; he did not want to spend consultant or study money. Mr. Lindsay explained the parking consultants currently being interviewed for design all had done mixed use retail components so there would not be an

additional consultant. Councilmember Livengood said his motion would be just what was on top of the facility. Vice Mayor Gomez, as the second to the motion, agreed.

Councilmember Polanski said she had voted no on the motion but now she wasn't clear what was voted on; she understood what was before the Council/Agency was to table it and only discuss the parking; and she did not know it included retail as well.

Mayor Esteves said he voted no because he knew that the structure, in a cost benefit analysis with a banquet facility, would be a steal and would be a future benefit for Milpitas.

RECESS

Mayor Esteves recessed the joint City Council/Redevelopment Agency meeting at 9:15 p.m. The joint meeting reconvened at 9:25 p.m.

RA7. MID YEAR BUDGET APPROPRIATIONS CIP REVENUE CHANGES

Finance Director Emma Karlen reported that in the agenda packets, staff had prepared and included a list of requests to increase budget appropriations for operating purposes or Capital Improvement Projects; the City also received additional revenue from outside agencies to offset some of the Capital Improvement Project costs; the combination of the revenue and additional requests resulted in a net fiscal impact to various fund balances in the amount of \$2,067,144; and there were sufficient fund balances in these funds to cover the additional appropriations.

Mayor Esteves suggested discussing the items one at a time and if there were no questions on an item, it would mean the item was okay with the Council.

Ms. Karlen presented item 1, \$7,235 from the General Fund to fund the maintenance costs for college classes at Milpitas High School, newsletter production cost, and the Joint Venture Silicon Valley Economic Development Alliance activity costs.

Councilmember Polanski, referring to the college classes at Milpitas High School, inquired if the request was because the number of students and the number of classes were now known as well as what the maintenance costs would be. Ms. Karlen responded that was the case. Principal Analyst Cindy Maxwell also confirmed that was the reason. Councilmember Polanski inquired what the additional newsletter costs would be. Ms. Maxwell explained the additional costs were for a professional designer to do the layout for the first three issues; staff was now prepared to do the lay-out in-house for the fourth issue.

Ms. Karlen presented item 2, \$71,000 from the General Fund to the Human Resources Department to pay for recruitment expenses for several key positions.

Acting City Manager Lawson stated that Finance and Human Resources had requested initial funding for recruitment purposes to fill several top management positions (the Fire Chief, Economic Development Manager, Neighborhood Services Manager, and City Clerk).

Mayor Esteves inquired why an Economic Development Manager position was being requested as it had always been vacant. Mr. Lawson responded he was proposing to not fill the Assistant City Manager position as he believed the Economic Development Manager position was more important to the City given all the planned development (the Town Center, K&B, the Library); the Assistant Manager's position was over the Fire Chief, Public Works Department, and Information Services, and he felt those departments were run well on their own; the previous Assistant City Manager had informed him that he spent most of his time on RDA and Economic Development issues and what was really needed was an Economic Development Manager. Mayor Esteves said the City had a City Manager who was both a City Manager and doing the RDA and Economic Development work; if there was only an Economic Development Manager, there would not be a back-up City Manager. Mr. Lawson said the majority of the time he had been in the City, there had not been an Assistant City Manager. Mayor Esteves stated he was referring to the former Assistant City Manager, Blair King, who had RDA, Economic Development, and at the same time acted as an Assistant City Manager. Mayor Esteves inquired as to the salary for an Economic Development Manager versus an Assistant City Manager. Carmen Valdez from the Human Resources Department

stated she did not have the salary table with her. Mr. Lawson said he believed the salary for Assistant City Manager was approximately \$170,000 and the Economic Development Manager was \$120,000.

Mayor Esteves inquired as to the other positions being requested. Mr. Lawson listed the Fire Chief, Economic Development Manager, Neighborhood Services Planning Director, and the City Clerk's position, which would not be outsourced, however, funding for recruitment purposes was needed. Human Resources Analyst Carmen Valdez informed the Council that the requested funding included the executive recruitment advertising as well and meals for oral board participants.

Councilmember Polanski said she found it troubling to have heard about some of these potential retirements and openings through community members at public meetings; she also found out from a community member who the recruiter was going to be prior to the budget appropriation being made; she knew the Acting City Manager had a right to hire everyone within the organization but questioned how this would usurp the authority of any permanent City Manager coming in if the Acting City Manager was going to make acting positions permanent, make a determination that an Assistant City Manager was no longer needed and an Economic Development Manager was needed; she felt the only two areas that needed immediate attention were the Fire Chief and the City Clerk as well as Deputy City Clerk; she was uncomfortable with an Acting City Manager making some of these decisions permanent especially when everything she had heard in the last two years budget wise was that the economy was still not turning the way it should; she was not comfortable spending the \$71,000 for the five positions when she only believed that two, possible three if the Deputy City Clerk position was also being looked at, were most needed; and she thought the most needed position was a permanent City Manager and wanted that on the agenda for the next City Council meeting.

Vice Mayor Gomez, referring to hiring a permanent City Manager, said he felt it did have some impact on some of the positions being talked about; however, he did not see the Council going into the process of hiring a permanent City Manager for several months simply because of the budget process and labor negotiations coming up; he did not want to wait six months to fill several key positions; he considered the Economic Development Director a key position as well as Planning Director and would like to get somebody permanent into all of those positions; in terms of Economic Development Director, he felt there was a need to be realistic; the previous Assistant City Manager was, in essence, doing those duties – most of his job involved Redevelopment; he thought some money should be saved and an Economic Development Director hired instead of an Assistant City Manager; he was comfortable with Mr. Lawson making these appointments, trusted his judgment, and thought he would do what was in the best interest for the City.

Councilmember Livengood said he was going to support the Acting City Manager's recommendations; he did not know when the City Council was ultimately going to make a permanent replacement for Mr. Wilson, but it certainly wouldn't be relatively soon; he was not looking at making that move any time relatively soon; he also thought Mr. Lawson was right on the mark when he talked about the need for a Economic Development Director; it was a position that had been vacant for a while; he thought the Acting City Manager's recommendation that the Assistant City Manager position not be filled was probably a wise one; also, there were a number of people in City Hall that were acting in the roles they were in and thought it was better to get those positions recruited for and filled with a permanent person, whether it be the person who currently held the job as a temporary/acting or somebody else; he thought it was better for the organization to have permanency; he had complete confidence in the Acting City Manager that he would make the appointments and make them well; and he did not have a problem with the recommendations that the Acting City Manager had made.

Ms. Valdez reported the Economic Development Manager's salary was in the range of \$82,000 to \$108,000, and Assistant City Manager's salary was in the range of \$129,000 to \$170,000.

Councilmember Giordano commented she would concur that the recruitment for the Economic Development area was certainly something that needed to be done no and a potential cost savings; and inquired if the job title of the Assistant City Manager went away or would it remain now unfilled. Mr. Lawson responded it would remain unfilled.

Mr. Lawson, referring to the Deputy City Clerk's position, stated there was a hiring list and candidates were presently being interviewed for the position.

Mayor Esteves said he felt it had nothing to do with Mr. Lawson and his competence but was a management philosophy; first and foremost he thought the City should look into filling the City Manager position as soon as possible because the City Manager should have a hand in developing the organization; it was mentioned that union negotiations were upcoming and inquired who would be doing that; he did not disagree in hiring all the rest, however, the City Manager position should be considered first and foremost; and he was not comfortable with filling the positions and then hiring a City Manager.

VOTE on approving Item 2 (Approve \$71,000 from the General Fund to Human Resources Department to pay for recruitment expenses for several key positions):

Ayes: 3 Noes: 2 (Esteves, Polanski)

Ms. Karlen presented item 3, \$80,000 from the General Fund to Recreation Division to pay for additional contracted instructors; the cost for these services would be recovered through enrollment fees.

Ms. Karlen presented item 4, \$50,000 from General Fund to Building Division to cover temporary staffing expense due to request from the Parc Place developer for a dedicated inspector; the cost for the dedicated inspector would be reimbursed by the developer.

Ms. Karlen presented item 6, \$1,042,762 from the Redevelopment Agency Project Fund to non-departmental budget to pay for additional obligation to the Education Revenue Augmentation Fund as mandated by the State; the required contribution amount for FY04-05 was \$1,042,762 more than originally anticipated.

Mayor Esteves inquired if there was any impact on any other project or City operation due to this increase. Mr. Karlen responded there would be an impact on the Redevelopment Agency fund balance.

Ms. Karlen presented item 5, \$35,000 from the Abandoned Vehicle Abatement Service Authority (AVASA) Fund to the Police Department to provide for continued service on the removal of abandoned vehicles on the roadways and to pay for a laptop computer.

Councilmember Polanski inquired if there was usually a budget for abating abandoned vehicles, were more vehicles being found, and why was more money being requested. Ms. Karlen explained there was usually a budget for the abandoned vehicle program, there had been more activity, the budget was expended based on staff charging the time to administer that activity and, therefore, they had an additional request for funding. Councilmember Polanski inquired if it involved overtime. Acting Police Chief Nishisaka responded it did involve overtime and in order to continue removing abandoned vehicles, the additional budget allocation was being requested.

Mayor Esteves inquired if staff anticipated this to be a continuing volume. Acting Chief Nishisaka responded yes, there was a trend of abandoning vehicles on public roadways, and it was felt there would be a continuing impact. Mayor Esteves inquired if any revenue was received. Chief Nishisaka responded for every vehicle that was towed, money came back into the General Fund. Mayor Esteves inquired if the additional revenue was more or less than the cost. Ms. Karlen said it was hard to say because it was based on the County's allocation. Mayor Esteves suggested hiring somebody instead of paying overtime and inquired how much

was being paid. Chief Nishisaka responded he thought hiring one person dedicated just to abandoned vehicles would not be cost efficient; he would rather have officers assigned to overtime since it was sporadic. Mayor Esteves inquired what the difference would be in regular time and overtime. City Manager Lawson responded it was time and one-half. Mayor Esteves inquired what the rate was for the person doing it right now. City Manager Lawson said they were patrol or police officers. Mayor Esteves inquired what the hourly rate was. City Manager Lawson said he thought it was about \$60 to \$65 an hour. Human Resources Analyst Carmen Valdez said the rate was \$72 an hour, which included benefits. Mayor Esteves inquired if that was the regular rate or overtime. Ms. Valdez said that was straight base pay and the overtime rate would be time and one-half, which would be approximately \$107 an hour including benefits.

Councilmember Polanski inquired if reserve officers were used to assist with the abandoned vehicles. Chief Nishisaka responded no reserve officers were used.

Ms. Karlen presented item 7, \$15,000 from the Water and Sewer Funds to the Engineering Division to provide for consultant costs for additional hydraulic water and sewer modeling; the Water and Sewer funds would pay \$7,500 respectively for the cost.

Councilmember Polanski inquired why the additional consultant costs for this area. Principal Engineer Darryl Wong explained that periodically there were projects that came in that required some review on a short turn around; staff wished to have the dollars available to have the work done; if it was for a project, the dollars would be charged back to the developer and would go to the General Fund; in some cases, it was for public projects that need a review, and that would be what the money was for.

Ms. Karlen presented item 8, \$300,000 from Redevelopment Agency Fund to provide for additional Public Works construction litigation fees and costs.

City Attorney Mattas explained these were Public Works construction litigation costs; the primary cases involved during the current fiscal year were the Main Fire Station, which had been settled recently, as well as the City Hall litigation.

Ms. Karlen presented item 9, \$200,000 from the RDA Tax Allocation Bond Proceeds to Capital Project No. 8153, North Main Street Utility Improvements, to fund additional project costs. Ms. Karlen explained this was not additional funding as the project itself was only funded for a portion; staff needed to move onto the next phase of the project and required funding from the Redevelopment Agency Bond for the North Main Street Utility Improvements; and was similar to request numbers 10 and 11, which needed additional funding in order to move onto the next phase of the project.

Mayor Esteves said he thought the next phase of the projects had also been budgeted and asked if it was being said that the next phase of the projects was never budgeted. Ms. Karlen said the projects were able to work faster than what had been anticipated. Mayor Esteves inquired if this was for next year's budget that was being spent this year. Projects Manager Mark Rogge clarified that the last CIP funded the amount of money that was felt would be spent in the current Fiscal Year; however, the project was moving ahead at a rate that staff would want to have the money available before the end of the Fiscal Year; it was still the money within the Cost Plan on the projects, however, just allocating some more of the funding earlier.

Councilmember Polanski, referring to items 9, 10, and 11, said it would probably be appropriate in the future to have those items come before the CIP Subcommittee. Acting City Engineer Greg Armendariz said the plan was to schedule a CIP Subcommittee meeting towards the end of February, well in advance of the CIP and budget process.

(Item 10: \$200,000 from the RDA Tax Allocation Bond Proceeds to fund a new Capital Project No. 8159 North Main Street EIR Mitigation for the development of a mitigation plan and preliminary work related to the library and East parking garage.)

Ms. Karlen presented item 11, \$200,000 from the RDA Tax Allocation Bond Proceeds to Capital Project No. 8165, Main Street Midtown Improvements, to fund additional project costs.

Mayor Esteves stated he was having a problem with the word “additional” as it was not really an additional project cost, it was advanced project costs. Ms. Karlen confirmed it was to advance the project cost; it was not funded in the current budget. Mayor Esteves reiterated that it was additional with respect to the current budget, but with respect to the project, it was not additional, it was advanced.

Ms. Karlen presented item 12, \$40,000 from the Water Fund to Capital Project No. 7098 South Milpitas Water Replacement to fund additional project costs. Ms. Karlen clarified that this was an advance cost request, not additional cost.

Ms. Karlen presented item 13, \$54,895 from the Street Fund to Capital Project No. 4214 Piedmont Road to replace the state funding shortfall for this project.

Ms. Karlen presented item 14, \$276,192 to Capital Project No. 4223 Annual Street Resurfacing 2005 to pay for street resurfacing, the funding source for this appropriation was from the Valley Transportation Agency.

MOTION to approve the funding requests (the Fiscal Year 2004-05 mid-year budget appropriations and additional Capital Improvement Project revenues as itemized in the budget change form included in the Agency/Council agenda packet).

M/S: Gomez, Livengood.

Ayes: 5

Councilmember Polanski inquired if the motion covered everything except No. 2, where a separate vote was taken. Mayor Esteves confirmed it was.

**RA8.
FINANCIAL STATUS
REPORT**

Finance Director Karlen reported there had been some recent encouraging news as reported by the Bureau of Labor Statistics on the employment rate in the San Jose area and improvement in sales tax revenue receipts; the last four quarters showed a 5.6 percent increase in sales tax revenue receipts in Santa Clara County compared to one year ago. Ms. Karlen reported General Fund revenues had been on track with approximately 43.8 percent of the budget revenue received at the end of December 2004. Ms. Karlen further reported General Fund expenditures continued to be under budget; at the end of six months, the savings was approximately \$2.3 million (year-to-date expenditures were at 46.6 percent). Ms. Karlen also reviewed key budget dates.

MOTION to note receipt and file staff report.

M/S: Livengood, Giordano.

Ayes: 5

***RA9.
INVESTMENT REPORT**

Noted receipt and filed the investment report for the quarter ended December 31, 2004.

***RA10.
MID-PENINSULA
HOUSING**

Approved Amendment No. 2 authorizing an extension of the Exclusive Negotiation Agreement with Mid-Peninsula Housing until May 31, 2005, for the sale and development of APN 022-08-041 (163 North Main Street).
(Councilmember Livengood abstained from voting on this item.)

**RA11.
ADJOURNMENT**

There being no further Redevelopment Agency business, Mayor Esteves adjourned the Redevelopment Agency meeting at 10:15 p.m.

The City Council meeting continued.

2. (Continued)

Mayor Esteves asked that the Council return to item 2.

City Attorney Mattas reported that staff did identify a policy, which was really a series of guidelines adopted by the Council in 1997 making reference to a request supported by a majority of affected residents (70 percent), and he thought the practice used here to identify the percentage was consistent with prior actions of the staff and the Council with regard to the installation of undulators.

Acting City Engineer Greg Armendariz reported staff went back and counted the number of households on the three streets, there were a total of 98 households, of those a total of 34 voted, of the 34, 30 voted yes and 4 voted no, resulting in 88 percent approval. Mr. Armendariz further reported if the Council approved the staff recommendation, staff would begin the contractual process but the undulators would not be installed until mid March; between now and then, staff would do additional surveys and contact the residents on the three streets who did not respond and provide the Council with a progress report at the first meeting in March to assure the Council that we can indeed proceed with the installation with a majority of the households in approval.

MOTION to approve the installation of eight new undulators including five undulators along Starlite Drive, two undulators along Blue Spruce Drive, and one additional undulator along Fallen Leaf Drive and certify the Starlite Drive neighborhood undulators survey results.

M/S: Gomez, Livengood.

Ayes: 5

REPORTS OF OFFICERS & BOARDS

3. Council Finance Subcommittee

Vice Mayor Gomez placed this item on the agenda and said he wanted to request the Council form a City Council Subcommittee on Finance; one of the issues heard in the last election was fiscal responsibility; one of the things that troubled him over the year was that the Council was really only reviewing things brought to them; he envisioned the Subcommittee would review current expenditures and any proposed expenditures; and given Councilmember Giordano's experience in finance, he was requesting that she and Vice Mayor Gomez serve as a Finance Subcommittee.

Councilmember Polanski said she had no objection to having another subcommittee, and hoped that since finance is such an important area, the Council would be getting monthly reports, depending on when this committee meets.

Vice Mayor Gomez said this subcommittee would be subject to the Brown Act and the meetings would be noticed; any potential recommendations would have to be approved by the City Council.

Mayor Esteves inquired if there would be meeting minutes. City Attorney Mattas responded right now it would require the Council to direct that but as Vice Mayor Gomez indicated, if the Council approves the Open Government Ordinance, minutes would be required.

Councilmember Polanski commented that if it was under the Brown Act, there should be minutes and regular reports coming back to the Council.

Vice Mayor Gomez said he had no problem making sure this committee was subject to the Brown Act, and he thought it should apply to any committee.

Councilmember Livengood said he had recently asked for information concerning the City/School Committee. City Attorney Mattas said he didn't believe every committee has produced minutes. Councilmember Livengood said he had asked for some sort of standardization and would make the same plea for an SOP that every subcommittee have some rules and regulations. Mr. Mattas said that could be created; the Council may wish to consider the Open Government Ordinance because it mandates that; and if the Council doesn't act on the Open Government Ordinance, he could draft an SOP. Mr. Mattas suggested that this

conversation be considered under the Open Government Ordinance or that it come back because it was going beyond what was on the agenda.

MOTION to approve the creation of a City Council Subcommittee on Finance, subject to the Brown Act with the meetings noticed and minutes taken, and appoint Vice Mayor Gomez and Councilmember Giordano as members.

M/S: Gomez, Livengood.

Ayes: 5

**4.
Milpitas Veterans Club**

Vice Mayor Gomez placed this item on the agenda and said it was a request from some community members for the City to find an appropriate way to honor the Milpitas Veterans Club; since there was already a Veterans Memorial Committee that served not too long ago, Vice Mayor Gomez said he was proposing that committee be reinstated and come back to the Council with some recommendations.

MOTION to request the Veterans Memorial Committee provide recommendations to the City Council on an appropriate recognition of the Milpitas Veterans Club.

M/S: Polanski, Livengood.

Ayes: 5

**4A.
Terrace Gardens
Board of Directors**

Councilmember Giordano placed this item on the agenda and shared why Terrace Gardens was so important to her; she reported that last Thursday she attended the Terrace Gardens Board Meeting as a spectator and was asked to leave when they went into Closed Session; Councilmember Polanski had informed her that the Terrace Gardens Board of Directors was not subject to the Brown Act and she would provide their attorney's letter that stated that; she understood they appointed two new Board Members in Closed Session; the Brown Act requires this happen in public; this was why she asked that this item be placed on the agenda; since that request, she had reviewed the information provided to a community member in the last week or so as a result of a public records request submitted by her early last year; for these reasons, she was requesting that the following actions happen tonight or be placed on the next agenda: (1) Direct the City Attorney to provide a legal opinion regarding Terrace Gardens Board of Directors requirements to follow the Brown Act; should the Attorney somehow come to a conclusion that they do not fall under the Brown Act, even though Terrace Gardens was built on City property with taxpayer Redevelopment dollars and continues to receive taxpayers dollars, she would move to require the Terrace Gardens Board of Directors to adhere to the Brown Act; she believed the Council had this authority under the Regulatory Agreement which she reviewed (dated November 17, 1987, and recorded on January 28, 1988). Councilmember Giordano read from the agreement. Councilmember Giordano also requested any Bylaw changes by the Board of Directors require approval of a majority of the Milpitas City Council.

Councilmember Giordano said it was her understanding that all the appointments to the Terrace Gardens Board of Directors in the last 12 months were done in secret and not in keeping with a full and open public process; therefore, she was requesting on the February 15, 2005, Council agenda an item to determine the status of the Terrace Gardens Board Members appointed in 2004 and 2005; for the record, the Terrace Gardens Bylaws, Article 7 Section 11 states a Director may be removed from office with or without cause by a majority vote of the City Council of the City of Milpitas; she had reviewed the Terrace Gardens Bylaws, Article 6 Section 1a that stated two Directors shall be selected by the City Council of the City of Milpitas from the Council membership; therefore, she requested the Appointment Subcommittee return with a recommendation of a second Council representative to the Terrace Gardens Board of Directors on the next agenda to reflect an action to vote on that appointment.

Councilmember Giordano further stated that Section 16 of the Regulatory Agreement requires owner shall furnish City with a complete Annual Financial Report based upon an examination of the books and records of the project; this report shall be prepared and certified to by an independent certified public accountant; she noticed that the information provided from the public records request showed that the last audit was for FY 2001; and inquired if a more

current audit been done stating that needed to be answered; Section 13 of the Regulatory Agreement requires that on or before the first day of each fiscal year, owner will submit an operating budget for that fiscal year to the City, which budget shall be subject to prior approval of City before being finally adopted by the owner; she noticed that the information provided said that this was submitted to Council for their approval for FY 2003 and this was the last time it was done; she asked if more current budgets had been provided to the City and were they approved prior to the Terrace Gardens Board of Directors approval. Councilmember Giordano said she realized that some of these items may need to be agendized for the next meeting; she also moved to have a vote on the items that can be handled tonight; the remaining items she would like to have agendized for the next meeting of February 15, 2005; if the public records request was fulfilled in March 2004 when it was first made, this would not have gone on so long and that was why she would be supporting Vice Mayor Gomez's Open Government Ordinance later on in this meeting.

City Attorney Mattas said the item on the agenda related to directing the City Attorney's Office to prepare the opinion regarding compliance with the Brown Act; the other items would be appropriately scheduled at the Council's next meeting for action.

Mayor Esteves said he would like to add for the next meeting the issue about meals and if the City Council was able to act on it because this had been a long-time complaint of residents.

Councilmember Livengood commented he was the first President of Terrace Gardens back in 1987 when the Regulatory Agreement was agreed to and signed by both the City and the Board of Directors of Terrace Gardens; the reason was because the taxpayers of this community made a significant investment in that property; in fact, Terrace Gardens could not have existed without the millions of dollars that the City put into it; because of that, we felt the taxpayers needed to play a role in making sure that that facility was run properly and that was the reason for having a couple of Councilmembers on the Terrace Gardens Board; he thought this was a very important issue; as it related to the specific item on the Brown Act, he had no idea how any board that has the City Manager of the City of Milpitas and one Councilmember on a property that was built with city money could argue that they did not fall under the guise of the Brown Act; these were elected and appointed officials and people paid by the taxpayers and this was not a typical non-profit; he had a strong disagreement with any argument that the Terrace Gardens Board of Directors should be meeting in private or secret; if they are appointing directors in secret, there was no reason for it; if they are going into Executive Session to discuss financial things or lawsuits, there may be some rationale for that but to appoint directors, there was something really wrong with that and we as a city have a responsibility to investigate this thoroughly and find out what's been going on; a lot of things about what was going on there troubled him, not to mention the fact that he'd received a lot of complaints from the people who live at Terrace Gardens about what's been going on there over the last couple of years; he supported Councilmember Giordano's requests but wanted it to go much further than that; he wanted explanations why hadn't the city received the budgets, he hadn't seen it on a Council agenda in a couple of years, it was supposed to be approved by the City Council and it said so in the Regulatory Agreement; he was anxious to hear from the Terrace Gardens Board of Directors why they hadn't done what the Regulatory Agreement says they have to do; from his point of view, he would be supporting the direction that Councilmember Giordano was headed, wanted to make sure the Regulatory Agreement was gone through and that the Board of Directors had a responsibility to live up to that contract and wanted to hear from the City Attorney what areas they have not been living up to and then he would like to find out why they haven't been living up to it.

Mayor Esteves also asked for a history of Councilmembers who had served on the Terrace Gardens Board of Directors commenting that Councilmember Polanski had just served and before her former Councilmember Lawson was on the Board for many years. The Mayor also suggested inviting their legal counsel and if they are willing to do a presentation for the Council, the Council could ask questions.

Councilmember Polanski said she believed the item on the agenda was, as the City Attorney said, to direct the City Attorney to prepare a legal opinion regarding Closed Executive

Sessions for Terrace Gardens; then there were a series of complaints and accusations against the Terrace Gardens Board of Directors, which included her up until yesterday; all of a sudden there were all these accusations and all of these people wanting all of these questions answered; the Terrace Gardens Board of Directors has some very good people on it; they also received a legal opinion from their attorney and she believed that they would be able to come and answer these kinds of accusations and questions; the first time she knew that Ms. Montano had made a public records request to the City was when we recently received information on that a couple of weeks ago; she had no knowledge of that prior to that date and she thought a majority of the Terrace Gardens Board did not know it either; she believed Councilmember Livengood had alluded to this at another Council meeting and she had offered to share the letter from the Terrace Gardens attorney with the City Attorney; she would have to go back and check the dates, but that was probably over a year ago; she believed instead of making wild accusations about a good facility, a senior facility that's doing well, that the management team was hired by former Councilmember Jim Lawson and a number of other people, instead of trying to deface them and defame them publicly this evening, they should at least be allowed the opportunity at another time to come forward; she was hearing all of this for the first time, and it had nothing to do with the agenda item before her.

Mayor Esteves said it was clear for tonight the Council would only be acting on the item on the agenda and all the others would be on a future agenda.

Kathryn Monento said she would just like to hear in the same breath what was the recourse when this was developed 17 years ago to be taken in the event that there was no compliance; she knew the Council was speaking of the Brown Act but in the event the Board did not comply, she would like to hear it articulated what was the recourse for non-compliance.

Mayor Esteves said that was the direction as part of the motion to direct the City Attorney about compliance with the Brown Act and what recourse the City Council had.

Carmen Montano said she just wanted to follow-up with Polanski's comments; she sent a certified letter to Terrace Gardens, she had a copy, and Councilmember Polanski should have received it; she didn't know where Councilmember Polanski came off with saying that she didn't receive that letter; this was back in 2003, Terrace Gardens was seeking two directors to fill two vacancies; only two people applied, the City had done extensive outreach; two people applied and they did not get an answer (Titus Cascaro and herself); she asked Esteves and he said he didn't know anything about it; she asked the City Manager and he didn't know anything about it; she wrote a letter to the City Attorney and didn't get any feedback; finally, after almost two years, she got a letter; she finally requested the bylaws and was blown off and felt it was very disrespectful to her to not get an answer to her questions; she finally got one last year after almost two years and this is why she asked Debbie Giordano if she would find out what's going on; she'd like the City to do an investigation because to her it was a form of discrimination; she was a public servant and all she asked was to serve on Terrace Gardens. Ms. Montano further stated she had extensive background, some of the requirements to serve on Terrace Gardens she had fulfilled those – described her qualifications – there were 10 criteria and she had fulfilled five of those; she really believed Councilmember Polanski had a personal vendetta against her for some reason and she didn't know why but they were going to get to the bottom of this.

Councilmember Livengood asked a series of questions about Ms. Montano applying to be on the Terrace Gardens Board of Directors, there were two vacancies and asked if she ever got an interview for that job or a letter response. Ms. Montano responded two years later but not at that time; she was contacted but the other individual was never contacted. Councilmember Livengood said you applied for the position, you weren't contacted at that time, and asked if they then re-advertised for those positions and then appointed people subsequent to that. Ms. Montano said they have not, she had not heard any advertisement but they did appoint people to the position she applied for and these people were recruited by a member of the City Council. Councilmember Livengood asked for clarification that Ms. Montano applied and was not given an interview at that time and they just went out and got more candidates and appointed people other than her. Ms. Montano said after asking, a year and a half later she

finally did get an interview but she knew that they had already had-picked individuals who had been recruited. Councilmember Livengood said he was trying to get a feel for what happened in that time frame when she applied for the position and how her application was handled and she was saying it was ignored and that was her public records request. Ms. Montano responded yes. Councilmember Livengood asked for clarification who Ms. Montano sent her public records request to and that she sent it by certified letter and she had a receipt for that. Ms. Montano said she sent it to Terrace Gardens and then she hand delivered it to the City Manager and she had a receipt for the certified mail.

Mayor Esteves asked for a motion for tonight's agenda item so that Mr. Mattas could proceed with this agenda item and then the rest would be agendized.

City Attorney Mattas said as he understood the initial comments as made by Councilmember Giordano, it would be to direct the City Attorney to provide a legal opinion as to whether the Terrace Gardens Board is required to comply with the Brown Act; he wanted to make sure he understood that was the specific request and that would include closed sessions and everything else.

Councilmember Giordano said the specific motion was the direction to the City Attorney to provide that information; however, there were other components regarding review, Councilmember Livengood had discussed going through the bylaws and the regulatory agreement to find out what areas have not been complied with and she thought that would need to be reported back with the City Attorney's opinion. Mr. Mattas said he had a list of about 10 additional things the Council wanted and all of those items were really for future agendas because they were not part of the agenda tonight; the only item that was part of the agenda tonight was the direction on the legal opinion with regards to the Brown Act compliance.

MOTION to direct the City Attorney to prepare a legal opinion regarding Terrace Gardens Board of Directors compliance with the Brown Act.

M/S: Giordano, Livengood. Ayes: 4 Noes: 1 (Polanski)

ADJOURNMENT

Mayor Esteves said it was almost 11:00 p.m. and inquired what was the pleasure of the Council, noting that items 5, 6, 7 and 14 were left. Councilmember Polanski commented that some of the items were lengthy things the Council needed to discuss and since it was almost 11:00 p.m., she thought they should be moved to another meeting. Vice Mayor Gomez said he had no problem with that. It was the consensus of the Council to continue the remaining items to the next meeting.

City Attorney Mattas asked for clarification if it was the Council's intent that the continued items be placed at the front of the agenda. It was Council consensus to do that.

Mayor Esteves adjourned the City Council meeting at 10:57 p.m.

Gail Blalock
City Clerk

The foregoing minutes were approved by the City Council as submitted on February 15, 2005.

Gail Blalock, City Clerk

Date